IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 686 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NARESHKUMAR H TRIVEDI

Appearance:

MR MA BUKHARI, APP, for the appellant.

None apperars for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/06/2001

ORAL JUDGEMENT

1. The present appeal arises out of judgment and order dated June 9, 1989, rendered by learned Judicial Magistrate, First Class, Savli, in Criminal Case No.315 of 1988, acquitting the present respondents of charges under Sections 409, 477(A) and 114 of Indian Penal Code.

2. The facts of the case, stated in brief, are that respondent No.1 was working with Savli Nagar Panchayat as Clerk and respondent No.2 was President of the Nagar Panchayat of Savli. It is the case of the prosecution that for the period between January 1985 and April 1985, cement was allocated to different Taluka Panchayats and Nagar Panchayats, as per their requirements, by the District Panchayat. In all 568 bags of cement were delivered to the Savli Nagar Panchayat. It is further the case of the prosecution that, out of these bags, 140 bags were taken delivery of by respondent No.1 and 280 bags were take delivery by respondent No.2. As per the case of the prosecution, both the respondents misappropriated these cement bags by employing the same for their personal gain. In order to prove this, the prosecution has tried to bring on record the fact that the cement bags were despatched to Savli Nagar Panchayat and that they were taken delivery of by the respondents. It has also been brought on record that there is nothing on record to indicate that the said bags were accounted for in the accounts of the Panchayat and, therefore, a complaint was lodged and respondents were charge-sheeted for the said offences.

3. After considering the evidence led by the prosecution, the learned Magistrate came to a conclusion that the prosecution had failed to establish the case against the respondents herein and, therefore, acquitted them of the charges levelled against them.

4. Aggrieved by the said judgment and order, the State has preferred this appeal.

5. Heard learned Additional Public Prosecutor, Mr. Bukhari, who has taken this Court through the record and proceedings and the judgment and order in question. None has appeared for the respondents, though the respondents have been served with notice, as per the endorsement made on the Board.

6. Mr. Bukhari has closely read the evidence as well as the judgment and was not able to point out any error either of fact or of law from the judgment and order impugned herein.

7. This Court has also closely scanned the evidence on record. It transpires from the record that the prosecution case mainly banks on deposition of one Bhikhubhai Girdharbhai Bhatia (Ex.73), who was the Secretary of the Panchayat at that time and depositions

of witnesses Satishbhai Nagindas (Ex.57), Gopalbhai Natwarlal (Ex.59), Natwarlal Narandas (Ex.71) and Investigating Officer-Chauhan (Ex.84).

8. If the case against respondent No.1 is considered, it is amply clear that there is evidence to indicate that he had received 140 bags of cement and this aspect is not disputed even by respondent No.1 during the trial. But it also transpires from record that the said bags were received by him as per the instructions of Secretary, Mr. Bhatia and that the said quantity of cement was handed over to the Secretary, Mr.Bhatia, as is emerging from documentary evidence at Ex.77. For this purpose, if deposition of Mr. Bhatia, at Ex,.73 is seen, he has been shown Ex.77, where he says that it carries the stamp of the Panchayat and there is a signature which looks like his signature and it also bears signature of respondent No.1. He is not in a position to specifically deny his signature on Ex.77. He also admits during cross-examination that he has no dispute with accused No.1 and that accused No.1 has not reason to concoct any evidence against him. Ex.77, if perused, indicates that it is a report by accused No.1 addressed to the Secretary to the Panchayat that 140 bags of cement received by him as per oral instructions have been stored in the godown, which may be verified and accepted. The delivery slip was also enclosed along with that communication. Signature of accused No.1 has been identified by witness-Bhatia. Under the circumstances, the prosecution's case against accused No.1 could not have been accepted by the Trial Court and the Trial Court has, therefore, rightly not believed the prosecution case against respondent No.1 in respect of 140 bags of cement. It would not be out of place to note that even the Investigating Officer in his cross-examination has admitted that it has not emerged during the investigation that the case pleaded by respondent No.1 that 140 bags of cement were received by him and then handed over to the Secretary by intimation is incorrect. Therefore, there appears no substance in the appeal in respect of finding qua respondent No.1.

9. So far as the case against respondent No.2 is concerned, it transpires from the evidence that there is no direct ocular evidence to indicate that 280 bags of cement were taken delivery of by respodent No.2. The person who gave the delivery, namely, either the driver of the truck or the Coolie working on the truck has not been examined. The witnesses who have been examined, namely, the representative of transport operator or the despatcher has not been able to depose to the effect that

the cement bags were, in fact, delivered to respondent No.2. The only evidence that is sought to be pressed into service against respondent No.2 is Ex.33 and 34, which are the receipts purported to have been signed by respondent No.2 acknowledging receipts of 80 bags and 200 bags respectively. Again, for proving these two documents, reliance is placed on deposition of complainant, Mr. Soni, at Ex.21. But from his deposition it is clear that he could not have identified the signature of respondent No.2 as he had no personal knowledge about the signature of respondent No.2. He has never seen respondent No.2 signing any document nor has he received any personal communication from respondent No.2. Therefore, his say that the receipts Ex.33 and 34 carry signature of respondent No.2 could not have been accepted.

10. Next is deposition of Naginbhai Khushalbhai Patel (Ex.39), who has been elected as President of Savli Nagar Panchayat after the prosecution of respodent No.2. He admits that he saw documents Ex,.33 and 34 for the first time in the Court. Then he says that he had earlier seen these signatures while his statement was recorded by the Police. Then again, he changes his version and says that he is seeing these documents for the first time in the Court. Thus, a close scrutiny would indicate that he has changed his version several times, as is recorded by the learned Trial Judge in his elaborate judgment. It also transpires that witness-Naginbhai was on very strong inimical terms with respondent No.2. He has admitted during cross-examination that he had himself not spared any opportunity of making applications, lodging complaints and filing suits against respondent No.2. He admits that he had approached a bank from whom respondent No.2 had obtained a personal loan for putting respondent No.2 under pressure by recovering the loan amount. Thus, it is clear that this witness has a very strong animosity against respondent No.2. It also transpires from his deposition that he identifies the signature of respondent No.2 only because it is signed as "Mahendrabhai J."

11. The deposition of Secretary Bhatia, in this regard, is also such that it could not have been accepted by the learned Trial Magistrate. He also identifies the signature of respondent No.2 on Ex.33 and 34 on the ground that he was acquainted with his signature while he was serving with Savli Nagar Panchayat as Secretary, but is not able to stand the cross-examination and has admitted that communications received by the President were shown to him and then filed. He never used to put his signature thereon. It also transpires that the

Secretary had failed in his duty in maintaining proper accounts and registers and there are no records of stock of cement after the stock is received by the Panchayat. It also transpires that respondent No.2 never signed as "Mahendrabhai J." He may have been signing as "Mahendrabhai Jeshbhai Inamdar" or "Mahendrakumar Jeshbhai Inamdar", as per deposition of Naginbhai Khushalbhai.

12. Even after a very close scrutiny, this Court could not identify nor the learned Additional Public Prosecutor could show any error of law or error of fact in the impugned judgment and order. This Court does not propose to discuss the evidence in detail in light of the decision rendered by the Apex Court in State of Karnataka v. Hemareddy & Another, A.I.R. 1981 SC 1417 and Girijanandini Devi & Ors. v. Bijendra Narain Choudhary, A.I.R. 1967 SC 1124. This Court is in full agreement with the reasoning adopted and the conclusions arrived at by the learned Trial Magistrate.

13. There appears no merit in the appeal. The appeal deserves to be dismissed and the same is dismissed. The judgment and order impugned herein passed by the learned Judicial Magistrate, First Class, Savli, in Criminal Case No.315 of 1988, dated the 9th June, 1989, is hereby confirmed.

[A.L. DAVE, J.]

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